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if the female was under 15, if defendant attempted by force to have intercourse with her, and, if he did any overt act toward carrying out that purpose, he would be guilty of attempted rape, held not objectionable as failing to recognize the essentials of an attempt to commit a crime, which are the intent and an ineffectual act towards its commission.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 715.]

Error to Corporation Court of Roanoke.

M. Lufty was convicted of an attempt to commit rape, and he brings error. Affirmed.

Hairston & Hairston, of Roanoke, for plaintiff in error.

Jno. R. Saunders, Atty. Gen., *J. D. Hank, Jr.*, Asst. Atty. Gen., and *Morton L. Wallerstein*, of Richmond, for the Commonwealth.

NICKELS' ADM'R *v.* HORSLEY et al.

Sept. 17, 1919.

[100 S. E. 831.]

1. Executors and Administrators (§ 35 (19)*)—Revocation of Appointment Not Reviewable unless Plainly Wrong.—An appellate court will not review an order granting a motion under Code 1904, § 2687, for the revocation of the appointment of an administrator, except where manifest injustice has been done, or where it is plain that proper case has not been made for the exercise of the discretionary power of removal.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 515, 516.]

2. Executors and Administrators (§ 35 (2)*)—Removal for Adverse Interest.—Where a surviving partner, who was appointed administrator of his deceased copartner, failed to return any inventory within the time required by statute, and it appeared from his conduct that he was hostile and adversely interested to the distributees, his appointment was properly revoked.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 515.]

3. Partnership (§ 258 (2)*)—Death of Partner; Administrator's Right of Action against Survivor.—Unless there be exceptional circumstances, the administrator of a deceased partner is the only one entitled to sue to recover from surviving partners any balance due the estate of the deceased partner.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 882.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Error to Circuit Court, Scott County.

Motion by one Horsley and others for the revocation of the appointment of J. C. Parrish, as administrator of J. C. Nickels, deceased. From an order granting the motion, the administrator brings error. Affirmed.

S. H. Bond, of Gate City, and *Will H. Nickels*, of Bristol, for plaintiff in error.

W. S. Cox, of Gate City, for defendants in error.

LOYD CORPORATION *v.* COMMONWEALTH.

Sept. 17, 1919.

[100 S. E. 833.]

Taxation (§ 406*)—Assessment of Omitted Property.—Where a corporation disclosed to the commissioner of revenue all of its assets and gave the commissioner information from which he could have determined the value of the assets, held that, though the commissioner undervalued the assets, consisting largely of corporate stocks, and such valuation was not changed for several subsequent years, the corporation, in view of Code 1904, § 491, was entitled to the benefit of section 508, as amended by Acts 1916, c. 491, and was not liable as for omitted taxes because of the undervaluation.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 967.]

Error to Circuit Court, Washington County.

Motion by the Loyd Corporation against the Commonwealth to be relieved against an assessment for omitted taxes alleged to be erroneous. The court relieved the Corporation of taxes for the year 1910, but refused to relieve it for the other years, and the Corporation brings error, and the Commonwealth assigns cross-errors. Reversed.

F. S. Kirkpatrick, of Lynchburg, and *J. Irby Hurt*, of Abingdon, for plaintiff in error.

Ino. R. Saunders, Atty. Gen., *J. D. Hank, Jr.*, Asst. Atty. Gen., and *F. Briggs Richardson*, of Richmond, for the Commonwealth.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.